

# ORIGINAL

Before The  
FEDERAL COMMUNICATIONS COMMISSION JUN - 3 1996  
Washington, D.C. 20554

In the Matter of

Cellular Priority Access for National )  
Security and Emergency Preparedness ) WT Docket No. 96-86  
Telecommunications )

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COMMENTS OF BELL ATLANTIC NYNEX MOBILE, INC.

Bell Atlantic NYNEX Mobile, Inc. (BANM),<sup>1</sup> by its attorneys, hereby comments on the Petition for Rulemaking filed by the National Communications System ("NCS").<sup>2</sup> This Petition requests the Commission to adopt rules which would enable federal, state and local law enforcement and public safety agencies to request "priority access" to cellular systems.

BANM is committed to assisting law enforcement and public safety agencies, and already devotes substantial resources to that effort.<sup>3</sup> It agrees that providing these agencies with adequate spectrum is an important public policy

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<sup>1</sup>Bell Atlantic NYNEX Mobile, Inc. is the managing general partner of Cellico Partnership, which holds or controls cellular radiotelephone licenses to provide service in more than 80 cellular markets throughout the United States.

<sup>2</sup>These Comments are submitted pursuant to the Commission's Public Notice (DA 96-604, released April 18, 1996), seeking comments on the Petition.

<sup>3</sup>For example, BANM often donates cellular equipment and airtime usage in response to requests by public safety and emergency response agencies following natural disasters and in other emergency situations. BANM also donates cellular service to public agencies at events that place increased demands on the communications needs of these agencies.

goal. It does not believe, however, that the Petition is the most appropriate way to achieve that goal. First, no clear need for the type of extensive access rules which NCS proposes has been shown, particularly given the rapid expansion of capacity which mobile services are now undergoing. Second, the Commission has recently begun a broad inquiry to evaluate the radio spectrum needs of public safety agencies. Comments on that inquiry are not even due until this fall. Considering NCS's proposed rules before that inquiry is concluded would be premature. Third, there are numerous technical and other problems that need to be resolved before a national cellular priority access system can be considered. The wireless industry has been working toward priority access standards, but more needs to be done. The proper course for the Commission is to allow voluntary industry standard-setting to proceed

In the Omnibus Budget Act of 1993, Congress decided that only limited regulation of cellular carriers and other providers of commercial mobile radio services (CMRS) was in the public interest. The Commission has implemented Congress' direction by repeatedly finding that it should not impose new rules on CMRS providers absent a compelling need.<sup>4</sup>

The Petition does not demonstrate that there is a compelling need for a cellular priority access system. It identifies several public safety emergencies

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<sup>4</sup>E.g., Petition of the Connecticut Dep't of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers, 10 FCC Rcd. 7025, 7035 (1994) (Section 332 of the Communications Act, as amended in 1993, warrants imposing new requirements on CMRS providers only where there is a "clear cut need" for doing so).

where, for temporary periods of time, the local cellular network was overloaded. But there is no evidence that this is a recurrent problem, much less a growing one. To the contrary, cellular carriers continue to add substantial capability to their networks through the addition of new cells. They are also spending millions of dollars to implement CDMA, TDMA and GSM digital technologies, which will dramatically increase the capacity of cellular systems. And, in the past year, the Commission has awarded three new broadband PCS authorizations in every market that represent 90 mhz of spectrum, nearly twice as much as the existing cellular licensees hold. These rapid increases in both the amount of mobile radio spectrum and the efficiency with which it can be used do not support the Petition's assumption that new, detailed rules governing access are needed.

In addition, the Commission has recently begun a comprehensive new proceeding to conduct "an overall evaluation and assessment of public safety wireless communications."<sup>5</sup> That proceeding seeks to develop a record on whether public agencies in fact need additional spectrum and how much would be required. If the Commission finds unmet needs exist, it may allocate new radio frequencies specifically for public safety and/or law enforcement agency use. Given the preliminary state of that rulemaking,<sup>6</sup> it would constitute cart-before-the-horse

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<sup>5</sup>The Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Docket No. 96-86, Notice of Proposed Rule-making (FCC 96-155, released April 10, 1996) at ¶ 3.

<sup>6</sup>Comments on the Notice in WT Docket No. 96-86 are not due until September 20, 1996, and replies are not due until October 18, 1996. Notice at ¶ 105.

rulemaking to graft onto the existing cellular rules a government priority access plan.<sup>7</sup> The proper course is to complete the broader rulemaking into the need for additional spectrum. If such a need is demonstrated, and cannot be met through allocation of new spectrum, then the Commission can take up the NCS's proposal.

Consideration of the rules proposed by the Petition would also be premature because of the unsolved technical problems that cellular priority access entails. The Petition acknowledges, "[S]tandards for cellular priority access are still in the development stage. As a result, no service provider is currently in a position to provide the priority access described herein." Petition at 4-5. Those problems, difficult enough in the analog system context, become even more complex in developing access technology to fit three distinct wireless digital technologies. Wireless industry groups (as the Petition notes) are currently seeking to develop access standards, but this is only work in progress. The Commission should not interfere with the efforts of these groups at this time by taking upon itself the task of writing technical rules. In other contexts, the Commission has recognized that there are numerous benefits in allowing industry groups to develop technical standards.<sup>8</sup> It should follow that same policy here. Allowing standards to evolve

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<sup>7</sup>Adoption of cellular-specific rules, as NCS requests, would also be contrary to the Commission's repeated position that all CMRS providers offering similar services shall be regulated consistently. Any priority access system must apply to other CMRS providers, including PCS and SMR.

<sup>8</sup>See, e.g., 47 CFR § 22.933, which states that cellular carriers can employ operational features "that have been developed by joint industry consensus through the Telecommunications Industry Association . . . ."

in this way is particularly important given the many other extremely complex and conflicting policy choices that the Commission would have to make in adopting the rules offered by NCS.<sup>9</sup>

BANM thus urges the Commission to take no action on the Petition at this time. Instead, it should develop a record in the new public safety rulemaking and take any actions warranted by that record to ensure adequate access to radio spectrum by government agencies. If the Commission then determines that adopting rules governing access to mobile systems is nonetheless needed, it can take up the NCS's proposals at that time.

Respectfully submitted,

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<sup>9</sup>For example, the Petition proposes standards that would give the Executive Office of the President authority to "rank" federal, state and local agencies for purposes of which have priority. But this a priori approach does not account for the wide variation in the types of public safety and law enforcement emergencies that may occur.

## CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of June, 1996, caused copies of the foregoing "Comments of Bell Atlantic NYNEX Mobile, Inc." to be sent by first-class mail, postage prepaid, or by hand-delivery, to the following:

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